

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE  
OFFICE OF THE STATE AUDITOR  
STATE OF MONTANA**

IN THE MATTER OF:

) CASE NO. INS-2011-338  
)  
)

BERKLEY INSURANCE COMPANY  
475 Steamboat Road  
Greenwich, CT 06830

) **NOTICE OF WITHDRAWAL OF**  
) **APPROVAL OF FORMS FILED AND**  
) **DISAPPROVAL OF FORMS FILED**  
)

Respondent.

The Commissioner of Securities and Insurance, Montana State Auditor (Commissioner), pursuant to the authority of the Insurance Code of Montana, Mont. Code Ann. § 33-1-101, et seq. (Insurance Code), hereby issues the following allegations of fact, conclusions of law, and order disapproving and withdrawing approval of Berkley Insurance Company (Berkely) form identified as DO 310900:

**ALLEGATIONS OF FACT**

1. Berkely filed new forms through SERFF filing MNLM-127620289. Form DO 310900 is blank except for identification of Berkley and the opening as follows:

Addition to Section III. Definitions. In consideration of the premium paid for this Policy, it is understood and agreed. 1. <<Insert Additional Wording here>>

There is no other wording or terms until the bottom of the form which states the following:

Whenever printed in this Endorsement, the boldface type terms shall have the same meanings as indicated in the Policy Form. All other provisions of the Policy remain unchanged.

2. A nearly identical form was approved by the Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI), on or about September 3, 2009.

## **CONCLUSIONS OF LAW**

1. The Commissioner has jurisdiction over this matter pursuant to Mont. Code Ann. § 33-1-101, et seq.
2. Pursuant to Mont. Code Ann. § 33-1-311, the Commissioner shall administer the insurance department to ensure that the interests of insurance consumers are protected.
3. Pursuant to Mont. Code Ann. § 33-1-501, insurers are required to file forms used as policies or for other purposes unless the forms are filed with and approved by the Commissioner.
4. Pursuant to Mont. Code Ann. § 33-1-501(4), the Commissioner may, at any time, withdraw approval of any form after providing notice to the insurer of the withdrawal of approval and the grounds for the same.
5. After receipt of the notice of disapproval or notice of withdrawal of approval, the insurer may not issue the disapproved form to Montana consumers. Mont. Code Ann. § 33-1-501(5).
6. Pursuant to Mont. Code Ann. § 33-1-502, the Commissioner may disapprove or withdraw approval of forms that do not comply with the Insurance Code, contain or incorporate by reference any ambiguous clauses, contain or incorporate by reference conditions that deceptively affect the risk purported to be assumed in the general coverage of the contract, and/or has any other indication of its provisions that is misleading.
7. The form identified herein violates each of the provisions identified in paragraph (4) of this Notice because it is blank. The form is ambiguous, deceptive, and misleading by the absence of any substantive provisions.

8. The form identified herein prevents the Commissioner from meeting her duty to protect insurance consumers because it contains no provisions for which the Commissioner may consider either detriment or benefit to insurance consumers.

### **ORDER**

Pursuant to Mont. Code Ann. § 33-1-501, it appears to the Commissioner that Berkley committed acts constituting violations of the Insurance Code, and, therefore, hereby orders:

1. Approval is withdrawn for Berkley form DO 310900 in all its constructs;
2. Berkley must identify all constructs of from DO310900 that have been approved for use in Montana and advise the Commissioner of the same within 30 days following the signing of this Order;
3. Berkley will stop issuing form DO 310900 in all its constructs to Montana consumers;
4. The Commissioner does not seek a penalty for the policy forms at issue here which were previously approved; and
5. This order is effective upon receipt of notice of service by the Commissioner.

### **NOTICE**

Berkley is notified that if it wishes to contest the disapproval and withdrawal of approval, it shall make a written request for a hearing to Mr. Jesse Laslovich of this office within 21 days of receipt of this order. The written request shall specify the grounds relied upon as a basis for the relief sought, as required by Mont. Code Ann. § 33-1-701(2). The Commissioner shall hold a hearing within 45 days of receipt of a request for a hearing unless postponed by mutual consent of Berkley and the CSI, as provided for by Mont. Code Ann. § 33-1-701(3). If no hearing is

requested within 21 days of receipt of this order by Berkley, and the Commissioner orders none, this order shall become permanent.

Should Berkley request a hearing, it has the right to be accompanied, represented and advised by counsel. If the counsel Berkley chooses has not been admitted to the practice of law in the State of Montana, he or she must comply with the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973), and *Montana Supreme Court Comm'n on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200.

DATED this 20<sup>TH</sup> day of December, 2011.

MONICA J. LINDEEN  
Commissioner of Securities and Insurance



BY: Robert W. Moon  
Deputy Insurance Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 21st  
day of December, 2011, by US mail, certified, first-class postage paid, to the following:

Berkley Insurance Company  
475 Steamboat Road  
Greenwich, CT 06830

Jean Barber